

## Newsflash Luxembourg

The law on the modernisation of the Luxembourg law dated 10 August 1915 on commercial companies, as amended (bill n°5730), has been adopted on 13 July 2016 by the Chamber of Deputies (the “**Law**”) and will come into force after its publication which is expected in the coming weeks.

Companies existing before the entry into force of the Law will then have 24 months to amend their articles of association to comply with the provisions of the Law.

Beside changes modernising the SARL and the SA, the Law introduces a new type of company, the simplified public limited liability company (SAS) and more generally clarifies the legal framework and confirm certain practices.

This newsflash is purported to give you an overview of the Law, we remain available to provide you with more detailed information.

### I. Modernisation of the SARL

The SARL will benefit from the possibility:

- to have up to 100 shareholders;
- to have an authorised share capital (allowing the board to issue shares);
- to issue beneficiary shares (i.e. shares not comprised in the share capital) and redeemable shares;
- to decrease to 50% the majority required for the approval of the transfer of shares to non-shareholder;
- to issue shares (which do not represent capital) in consideration for contribution of services under certain conditions;
- to allow the board of managers to suspend the voting rights of defaulting shareholders;
- for shareholders to enter into voting agreements;
- to distribute interim dividends;
- to change the nationality without the unanimous consent of the shareholders;

- to transfer the registered office from a municipality to another, by decision of the board;
- to appoint a day-to-day manager;
- to have its articles of association amended with a majority of  $\frac{3}{4}$  of the share unless otherwise provided by the articles of association (end of the double majority system requiring majority in number of shareholders representing  $\frac{3}{4}$  of the share capital).

### II. Modernisation of the SA

The SA will benefit from the possibility:

- to issue shares without nominal value below the accounting par value of the existing shares;
- to allocate free shares to employees and corporate officers;
- to increase the share capital by contribution of receivables certain, due and payable without auditor report (such contribution being now considered as a contribution in cash);
- to limit the transfer of shares (up to 12 months);
- to issue non-voting shares having a more flexible regime;
- to establish management committee and appoint general director;
- for the minority shareholders (having at least 10% of the voting rights) to take action on behalf of the company against the management and supervision bodies;
- for shareholders to renounce temporarily or permanently to the exercise of all or part of their voting rights;
- for the management to suspend voting rights of defaulting shareholders and for shareholders to enter into voting agreements;
- to change the nationality without the unanimous consent of the shareholders;
- to transfer the registered office from a municipality to another, by decision of the board.

### III. Presentation SAS

- The SAS will be part of companies benefiting from a limited liability, its articles of association will have to determine the matters which are reserved to the general meeting (aside from those provided for in the Law), and the quorum / majority required at such meetings.
- The SAS will be represented by a Chairman, its articles of association may also provide for the appointment of directors in addition to the Chairman.
- The shares of the SAS which may not be issued to the public may be transferred only in accordance with its articles of association which may freely set the conditions on which transfers may occur.



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### IV. General

- Clarification of the rights of the usufruct holder and bare owner in case of silence of the articles of association.
- Confirmation of the possibility to issue tracking shares (i.e. shares which financial rights are linked to the performance of one or more activities or assets of the issuing company).
- Changes affecting the possibilities of conversion into another legal form.
- Clarifications of the cases for which the cancellation of a general meeting may be requested.
- Confirmation in the law of the simplified liquidation whereby a sole shareholder takes over by universal transfer all the assets and liabilities of the liquidated company subject to the prior receipt of affidavits from tax and social security administrations.
- In case of liquidation, if the liquidator is a legal person, the natural person representing such legal person will have to be indicated in the deed appointing the liquidator.
- Shareholders holding at least 10% of the share capital / voting rights of a company are granted with a right to address written questions to the management body of the company on its decisions and on those of its subsidiaries entering into the consolidation perimeter.

Should you have any questions on the possibilities offered by this Law regarding your company or should you require additional information on the consequences of the entry into force of this Law, please do not hesitate to contact us.

#### Imprint

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